



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2013-0228; FRL- 9902-58-Region 4]

Approval and Promulgation of Implementation Plans; Mississippi; Transportation Conformity SIP - Memorandum of Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Mississippi Department of Environment Quality (MDEQ) on May 31, 2013. This submission adopts a memorandum of agreement (MOA) establishing transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. This action streamlines the conformity process to allow direct consultation among agencies at the Federal, state and local levels. This final action is being taken pursuant to section 110 of the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. If EPA receives such comments,

it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2013-0228 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2013-0228," Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. “EPA-R04-OAR-2013-0228”

EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sheckler's telephone number is 404-562-9222. She can also be reached via electronic mail at sheckler.kelly@epa.gov.

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I. What Action is EPA Taking?

EPA is taking direct final action to approve MDEQ’s May 31, 2013 SIP submission, to adopt a MOA establishing transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures for a portion of Desoto County, Mississippi and Mississippi’s SIP pursuant to the sections 110 and 176 of the CAA. Pursuant to section 110 of the CAA, EPA is approving into the Mississippi SIP the May 31, 2013, transportation conformity MOA

II. Background for this Action

A. What is Transportation Conformity?

Transportation conformity is required under section 176(c) of the CAA to ensure that federally supported highway, transit projects, and other activities are consistent with

(“conform to”) the purpose of the SIP. Conformity¹ currently applies to areas that are designated nonattainment and to areas that have been redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Act, for transportation related criteria pollutants including ozone, particulate matter (e.g., PM_{2.5} and PM₁₀), carbon monoxide, and nitrogen dioxide.

The 1990 Amendments to the CAA expanded the scope and content of the conformity concept by defining the scope of conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP’s purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. Also, the CAA provides that no Federal activity will: (1) cause or contribute to any new violation of any NAAQS in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the CAA apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. Chapter 53). EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP pursuant

¹ Conformity first appeared as a requirement in the CAA in the 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

to section 176(c) of the CAA. The CAA also required the procedure to include a requirement that each state submit a revision to its SIP to include conformity criteria and procedures.

B. Why are State's required to submit a Transportation conformity SIP?

A transportation conformity SIP is a plan which contains criteria and procedures for the State Department of Transportation (DOT), metropolitan planning organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and project pursuant to section 176(c) of the CAA. EPA promulgated the first federal transportation conformity criteria and procedures ("Conformity Rule") on November 24, 1993 (58 FR 62188) which was codified at 40 CFR part 51, subpart T and 40 CFR part 93. Among other things, the rule required states to address all provisions of the conformity rule in their SIPs frequently referred to as "conformity SIPs." Under 40 CFR 51.390, most sections of the conformity rule were required to be copied verbatim into the SIP. On August 10, 2005, the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) was signed into law. SAFETEA-LU revised section 176(c) of the CAA transportation conformity provisions by streamlining the requirements for conformity SIPs. Under SAFETEA-LU, states are required to address and tailor only three sections of the rule in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and 40 CFR 93.125(c). In general, states are no longer required to submit conformity SIP revisions that address the other sections of the

conformity rule. These changes took effect on August 10, 2005, when SAFETEA-LU was signed into law. The rule has been subsequently revised on August 7, 1995 (60 FR 40098), August 15, 1997 (62 FR 43780), November 14, 1995 (60 FR 57179), April 10, 2000 (65 FR 18911), and August 6, 2002 (67 FR 50808).

States may also choose to develop a MOA which establishes the roles and procedures for transportation conformity in place of adopting regulations. The MOA includes the detailed consultation procedures developed for that particular area. The MOAs are enforceable through the signature of all the transportation and air quality agencies, including the U.S. Department of Transportation (USDOT) Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and EPA.

C. How does Transportation Conformity Work?

The Federal or state transportation conformity rule applies to applicable NAAQS nonattainment and maintenance areas in the state. The MPO, the DOT (in absence of a MPO), State and local air quality agencies, EPA and the USDOT are involved in the process of making conformity determinations. Conformity determinations are made on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions budget (MVEB) established in the SIP. The calculated emissions must be equal to or smaller than the federally approved MVEB in

order for the USDOT to make a positive conformity determination with respect to the SIP.

Pursuant to Federal regulations, when an area is designated nonattainment for a transportation related NAAQS, the state is required to submit a transportation conformity SIP one year after the effective date of the nonattainment area (NAA) designations. *See* Section 40 CFR 51.390(c). On April 30, 2012, EPA designated the Memphis, TN-MS-AR area (hereafter referred to as the Memphis Area) as nonattainment for the 2008 8-hour ozone NAAQS. *See* 77 FR 30088. The area is comprised of Crittenden County, Arkansas, and Shelby County, Tennessee in their entirety and a portion of Desoto County, Mississippi. These designations became effective on July 20, 2012; therefore, pursuant to 40 CR 51.390(c), MDEQ was required to submit a transportation conformity SIP by July 20, 2013, to address the interagency consultation procedures and enforceable commitments related to conformity of transportation plans, programs, and projects in the 8-hour ozone Memphis NAA.² The Memphis Urban Area MPO³ is within the Memphis Area and is considered the multi-jurisdictional agency responsible for the implementation and coordination of urban transportation planning for all of Shelby County Tennessee,

² Tennessee and Arkansas will submit and/or update their respective transportation conformity SIPs for the Memphis NAA in separate submissions.

³ The West Memphis MPO is the agency responsible for urban transportation planning for the Crittenden County, Arkansas portion of the Memphis, TN-MS-AR 2008 8-hour ozone NAA.

the western four miles of Fayette County, Tennessee and the northern twelve miles of DeSoto County, Mississippi.⁴

III. EPA Analysis of Mississippi's Submittal

EPA's Transportation Conformity rule requires the states to develop their own processes and procedures for interagency consultation among the federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and the USDOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and the US DOT.

On May 31, 2013, the State of Mississippi submitted to EPA the DeSoto County (portion of the Memphis NAA) conformity and consultation interagency SIP, based on an MOA signed by the Memphis Urban Area MPO, the Mississippi Transportation Commission, Mississippi Department of Transportation, MDEQ, the USDOT FHWA - Mississippi Division, the USDOT FTA and EPA Region 4. Mississippi's MOA establishes procedures for interagency consultation for incorporation into the SIP to comply with section 176(c) of the CAA and 40 CFR 93 regarding conformity of

⁴ The portion of the Memphis Urban MPO in DeSoto County, Mississippi is the same boundary EPA designated as NAA for the Memphis, TN-MS-AR, 2008 8-hour ozone NAA on April 30, 2012. *See* 77 FR 30088. The boundary extends from the Mississippi -Tennessee state line twelve miles into DeSoto County including the jurisdictions of Horn Lake, Southaven, Olive Branch, Hernando and Walls in Desoto County.

transportation plans, programs, and projects that are developed funded or approved by the USDOT, Memphis Urban Area MPO, MTC and acted by and through MDEQ.

The State of Mississippi developed its consultation SIP based on the elements contained in 40 CFR 93.105, 93.122(a)(4)(ii), and 93.125(c). As a first step, MDEQ worked with the existing transportation planning organization's interagency committees that included representatives from the MDEQ; MDOT; the Memphis Urban Area MPO; FHWA —Mississippi Division; FTA; and EPA Region 4. The interagency committee met regularly and drafted the consultation procedures considering elements in 40 CFR Part 93.105, 93.122(a)(4)(ii), and 93.125(c), and integrated the local procedures and processes into the MOA. Mississippi's MOA requirement for interagency consultation is currently only applicable to the DeSoto County portion of the 2008 8-hour Memphis TN-AR-MS NAA. The resulting consultation process developed is unique to the State of Mississippi.

A public notice announcement on March 8, 2013, indicated that the MOA was available for public comment until April 9, 2013. The MDEQ posted the MOA on their website and provided access to the documents for review in person at the MDEQ Jackson office. A public hearing to receive comments regarding the proposed conformity SIP was held on April 9, 2013, in Hernando, Mississippi. No comments were received at the public hearing.

EPA has reviewed MDEQ's May 31, 2013, SIP submittal to assure consistency with the CAA as amended by SAFETEA-LU and EPA regulations (40 CFR part 93 and

40 CFR 51.390) governing state procedures for transportation conformity and interagency consultation and has preliminarily determined that Mississippi's MOA is in accordance with the above referenced federal requirements.

IV. Final Action

For the reasons set forth above, EPA is taking direct final action, pursuant to section 110 and 176 of the Act, to approve Mississippi's May 31, 2013, transportation conformity SIP and MOA to implement the interagency consultation procedures and enforceable commitments in a portion of Desoto County, Mississippi.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is

advised that this rule will be effective on [Insert date 60 days from date of publication] and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particular Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 24, 2013.

Beverly H. Banister,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52-[APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart (Z) - (Mississippi)

2. Section 52.1270 paragraph (e) is amended by adding a new entry for “Transportation Conformity Interagency Consultation and General Provisions” at the end of the Table to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * * * *				
Transportation Conformity Interagency Consultation And General Provisions	DeSoto County portion of Memphis, TN-AR-MS 2008 8-hour Ozone Nonattainment Area.	May 31, 2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	

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[FR Doc. 2013-27019 Filed 11/12/2013 AT 8:45 AM; PUBLICATION DATE:
11/13/2013]